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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,381	07/18/2003	Lcx P. Jansen	03-118 (US01)	3194
41696 7590 01/12/2007 VISTA IP LAW GROUP LLP 12930 Saratoga Avenue Suite D-2 Saratoga, CA 95070			EXAMINER WILLSE, DAVID H	
			ART UNIT 3738	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			01/12/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/623,381

Applicant(s)

JANSEN ET AL.

Examiner

Dave Willse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on October 24, 2006, is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 8, 11, 13, 17, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Thomas et al., US 2003/0074075 A1. The cutting of the wire (Figure 29d; paragraph **0107**) results in at least two biocompatible, unconnected, implantable, laterally resilient wires (paragraphs **0060** through **0062**). The needle or cannula **76** is *capable* of sequentially introducing a plurality of wires in a web-like arrangement (Figure 27a; paragraphs **0104** and **0109**), whether or not such was the intent. Regarding claim 8: paragraph **0116**. Regarding claims 11 and 13: paragraph **0118**. Regarding claims 17 and 18: paragraphs **0007**, **0058**, and **0116**.

Claims 9, 10, 12, 14-16, and 19-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al., US 2003/0074075 A1. Regarding claims 9, 10, and others, PMMA coatings or juxtaposed PMMA wires would have been obvious to the ordinary practitioner from paragraphs **0075** and **0118** in order to improve the biocompatibility of the

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implant and/or to facilitate integration with the PMMA bone cement. Regarding claim 12 and others, a bone cement spraying device configured to be introduced within a cannula or the like would have been obvious in order to minimize the incision size. Regarding claim 15 and others, a plunger assembly would have been obvious from paragraphs **0102** and **0118** in order to deliver materials for inducing bone growth. Regarding claim 19 and others, a separate compression fracture reducing device would have been obvious from paragraphs **0007**, **0109**, and **0116** in order to ensure adequate expansion of the defect for accommodating the implant. Regarding claim 20 and others, introducing a *plurality* of wires would have been obvious in order to permit refinements on the level of implant material to be inserted into a particular bone defect, with further motivation having provided at paragraph **0089**, which states that one *or more* implants can be inserted; as seen from paragraph **110**, the wire “can be first cut to length then loaded into the delivery gun”, and a replaceable cartridge can be used.

Claims 7, 8, 11, 13, 17, 18, 20, 21, 28, 29, and 32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Thomas et al., US 2004/0024463 A1, the disclosure of which is similar to that discussed above but more explicitly describes multiple implants, cannulas, and vertebral compression fractures (abstract, lines 12-13; paragraphs **0114**, **0136**, **0138**, **0140**; claims 4, 7, 15, and 21).

Claims 9, 10, 12, 14-16, 19, 22-27, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al., US 2004/0024463 A1, for reasons similar to those set forth above.

The Applicant's remarks have been considered. Regarding Thomas et al., the Applicant asserts that Thomas et al. lack unconnected wires, but the examiner disagrees, as explained

above. The modified and added grounds of rejection were necessitated by the added language pertaining to the wires being "unconnected" (claim 7, line 3; claim 20, line 3). Therefore:

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is 571-272-4762 and who is generally available Monday through Thursday and often on Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Dave Willse
Primary Examiner
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